Pension-Related Changes
Massachusetts General Laws & Federal Statutes
Part I

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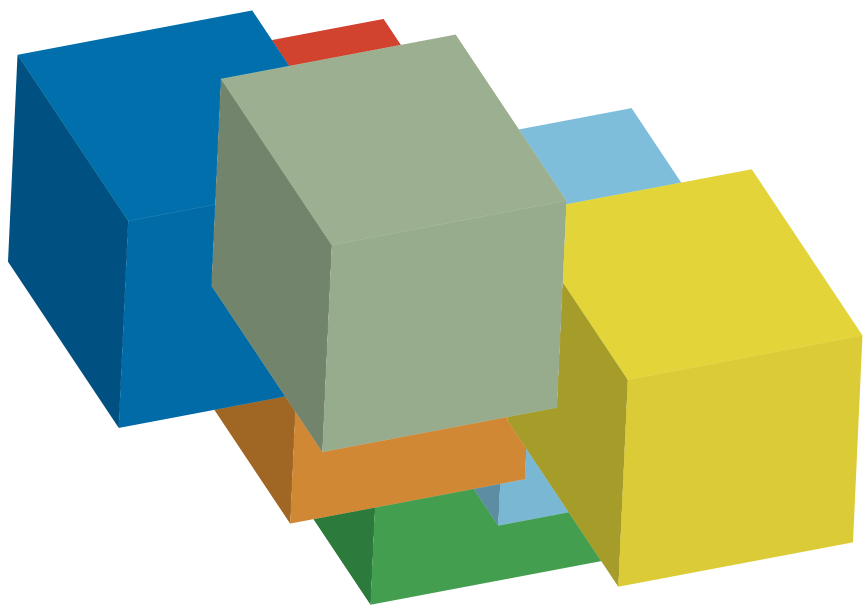
PERAC Seminars | Fall, 2004



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Compensation and Benefit Limits

In 2002, G.L. c. 32 was amended to be in compliance with federal limitations on the dollar amounts of retirement allowances and the compensation used to calculate the allowances. Sections were also added that allow retirement boards to establish special funds to deal with compensation and benefits in excess of the limits.

Under the federal tax laws, the compensation used to calculate the retirement allowance in a defined benefit plan is limited. For 2004 the limit is generally $205,000 ($305,000 for persons who became members prior to December 31, 1995). The compensation limit is adjusted annually.

The federal laws also limit the retirement benefit that can be paid out. This limitation is much more complex than the compensation limitation. The general benefit limitation for 2004 is $165,000 for a member retiring at age 65. The limitation is usually lower for members who retire earlier. The benefit limit is also adjusted annually.

Which members or retirees could be subject to the federal limitations?

- Any retiree whose regular compensation in any year was in excess of $150,000
- Any retiree whose annual retirement allowance is in excess of $90,000
- Any active member whose rate of regular compensation is in excess of $200,000
- Any active member whose regular compensation in any year was in excess of $150,000

In PERAC Memorandum #45/2002, boards were instructed to review their files and identify retirees or active members who might be subject to the limitations. Information was provided to the PERAC Actuary so actual problems could be identified and dealt with.

Since the enactment of the amendments, boards have requested PERAC assistance with respect to approximately 20 individuals. Of these, only 3 or 4 have actually presented problems with the limitations. In general these problems were benefits payable that were too high. This can occur when a relatively young person with long service and high levels of compensation retires.

The number of current employees that will be impacted is limited because the definition of “regular compensation” has been amended to reflect the federal limitations. If a member reaches the limitation, contributions are to stop. The retirement board can establish a special fund to which contributions after the limitation is reached can be made and from which benefits can be paid. The State Retirement Board and the Cambridge Retirement Board have such special funds.

Actions Needed

- Look at all current retirees for those with regular compensation in any year was in excess of $150,000 and for those with a benefit in excess of $90,000.

- Monitor current members for the compensation limit.

- As members retire, review the allowance payable to ascertain whether limitations are exceeded.

Disclosure to Employees Not Covered by Social Security: The Social Security Protection Act of 2004

Effective January 1, 2005, employers who do not provide Social Security coverage to their employees will be required to provide notice to all new employees to explain the effect of non-Social Security employment on the receipt of Social Security benefits [Government Pension Offset (GPO) and the Windfall Elimination Provision (WEP)]. The law will require the new employee to sign the notice, and the employer must provide a copy of the signed notice to the appropriate retirement board. The law also requires the Social Security Administration to change its annual benefit statements to clarify the discussion of the potential impact of the GPO and WEP.

The Notice will be prescribed by the Social Security Administration (SSA). As of October 18, 2004 the SSA had not finalized the Notice, but drafts are in circulation at the SSA.

Pension Holiday

Chapter 46 of the Acts of 2003, **(An Act Providing Relief and Flexibility to Municipal Officials)** included provisions to allow municipalities to reduce their pension appropriations for fiscal years 2004 and 2005.

The reduced appropriation could not be less than normal cost and the community could not reduce its appropriation by more than the amount that certain local aid payments had been reduced. A community that had a special statutory emergency reserve balance of 2½% of the prior year's non-school department appropriations could not implement the Pension Holiday until that balance was fully expended.

The decision to accept the Pension Holiday program is to be made by both the Executive and Legislative Authority. PERAC assists boards with a preliminary estimate of the impact of the Pension Holiday and in producing the required notice to the Legislative Authority. Finally, both PERAC and the Department of Revenue are required to approve the implementation of the plan.

After the amount of a reduction was established, the PERAC Actuary issued a new appropriation letter and an amended funding schedule incorporating the impact of the Pension Holiday is to be submitted to the Actuary for approval.

A few municipalities have submitted requests for approval of a Pension Holiday. After approval by DOR, PERAC has issued revised appropriation letters. As of this date, six amended funding schedules have been submitted to PERAC and approved. If all of the municipalities that have requested a Pension Holiday complete the process and receive an approved funding schedule, the actual deferrals could be $6,751,000.

It is possible that additional Pension Holiday appropriations could be submitted and approved before the end of the year.

Chapter 46 of the Acts of 2003: Pension Holiday

SECTION 128. (a) Notwithstanding any general or special law in a city, town, district, or authority which accepts the provisions of this subsection, the appropriation for fiscal year 2004 and 2005 for the unfunded portion of said city or town's unfunded pension liability may be less than the amount required by the funding schedule adopted pursuant to this section or subsection 6A of section 22 or pursuant to a special act; provided, however, that in no event may the appropriation for such year be less than the normal cost component of the appropriation required by such schedule nor shall said appropriation be reduced by an amount more than the amount by which said city or town was reduced in local aid payments, either in the aggregate or only the amounts appropriated for the purposes of lottery aid and additional assistance in the aggregate, received pursuant to section 3 of chapter 184 of the acts of 2002, as further reduced pursuant to section 3 of chapter 26 of the acts of 2003. No city or town shall implement the provisions of this section without the approval of the department of revenue and the public employee retirement administration commission; and furthermore, no municipality may implement the provisions of this section if it has available a special statutory emergency reserve that requires at least a balance of 2.5% of prior year non-school departmental appropriations and said balance is fully unexpended.

(b) The decision to accept the provisions of this section shall be made by both the executive and legislative bodies of the governmental unit in which the employees are members of the system. For purposes of this subsection, "executive body" shall mean the mayor in a city, the board of selectmen in a town or whoever is designated as such by a city or town charter, and "legislative body" shall mean the city council in a city, the town meeting in a town or the town council in a city or town that has a council form of government. A notice from the retirement board shall be provided to the respective legislative body notifying them of the option. Included in the notice shall be a summary of the existing funding schedule setting forth the normal cost and the amortization component of fiscal year 2004 and fiscal year 2005 appropriations and a description of the estimated impact of reducing that appropriation on future appropriations. This notice shall be submitted on or before the fifteenth day after the acceptance of this section.

(c) Upon notification by the clerk of the legislative body of the amount so appropriated, the retirement board shall notify the actuary who shall issue a revised appropriation letter in accordance with paragraph (c) of subsection (7) of said section 22 of said chapter 32. Notwithstanding any general or special law to the contrary, the amount of the reduction in the appropriation resulting from the acceptance of this section shall be expended solely for the direct benefit of the employees and retirees of the governmental unit who are members of the system.

(d) In any city, town, district, or authority which accepts the provisions of this subsection, the retirement board of said system, shall, on or before January 1, 2004, submit to the actuary a revised funding schedule that incorporates the impact of reducing the appropriation for fiscal year 2004 and 2005; provided however that, notwithstanding the provisions of this section or any general or special law, said revised schedule and any future updates thereto may be designed to reduce the unfunded actuarial liability of said system to 0 no later than 1 year after said fully funded due date if 1 year is taken, but in no case shall the due date extend beyond June 30, 2028.

(e) In a city, town, district, or authority, the employees of which are members of a county or regional system, the retirement board of said system shall provide the notice of the option to adopt this subsection. In any such system in which the appropriation is allocated in accordance with the proportion that the

Chapter 46 of the Acts of 2003: Pension Holiday (cont.)

Chapter 46 of the Acts of 2003: Pension Holiday (cont.)

aggregate of the annual rates or regular compensation of all members of such system who are employees of any such governmental unit bears to the total of all such aggregates for all such members of such system, the actuary shall provide the retirement board with an estimate of the normal cost component of the appropriation and the amortization component of the appropriation required by such city or town for fiscal year 2004 and fiscal year 2005.

New Actuarial Equivalent Factors Effective December 27, 2004

Sections 67 and 366 of the FY 05 Budget mandated consideration and adoption of new actuarial factors. The new factors result in substantial increases in many Option C retirement allowances. The new factors will be used in calculating any retirement allowances with an effective date on or after December 27, 2004.

FY05 Budget: Actuarial Equivalent

SECTION 67. Said section 1 of said chapter 32, as so appearing, is hereby further amended by striking the definition of "Actuarial equivalent" and inserting in place thereof the following definition:—
"Actuarial equivalent", any benefit of equal value when computed upon the basis of a mortality table to be selected by the actuary and an interest rate determined by the actuary.

SECTION 336. Notwithstanding the provisions of any general or special law to the contrary, the public employee retirement administration commission shall review the current combined table of mortality and select a new table of mortality within 180 days of the effective date of this act.

New Interest Rates for Buybacks

Chapters 279 and 280 of the Acts of 2004 dealt with the interest that members will be charged for buybacks beginning July 1, 2005. Members buying creditable service under most provisions of G.L. c. 32, § 3 will be required to pay one half of the actuarial assumed interest rate that is used in the board's funding schedule on the date that the buyback begins. The actuarial assumed interest rates vary between 7½% and 8½%. PERAC's Actuarial Unit is preparing forms that boards may use to calculate the buybacks, and further instructions will be issued.

Chapter 278 of the Acts of 2004: New Interest Rates for Buybacks

SECTION 1. Section 1 of chapter of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the definition of "Board" the following definition:-
"Buyback interest", one-half of actuarial assumed interest.

SECTION 2. Section 3 of said chapter 32, as so appearing, is hereby amended by inserting after the word "him", in line 93, the following words:- together with buyback interest to the date of reemployment.

SECTION 3. Said section 3 of said chapter 32, as so appearing, is hereby further amended by striking out, in lines 334, 342, 344, 406, 472 and 473, 533, 576

Chapter 278 of the Acts of 2004: New Interest Rates for Buybacks (cont.)

and 577, 580, 591, 601, 609 and 610, 612, 768, 781, 790, and 792 and 793, the words "regular interest" and inserting in place thereof the following words:- buyback interest.

SECTION 4. This act shall take effect on July 1, 2005

Chapter 280 of the Acts of 2004: New Interest Rates for Buybacks

SECTION 1. Section 1 of chapter 32 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the definition of "Accumulated additional deductions" the following definition:-

"Accumulated buyback deductions", the sum of the amount of the regular deductions and the buyback interest thereon that would have been credited to a member's account in the annuity savings fund of a system had buyback interest been credited rather than regular interest.

SECTION 2. Section 3 of said chapter 32, as so appearing, is hereby amended by striking out, in lines 408, 474 and 475, and 535, the words "accumulated regular deductions" and inserting in place thereof, in each instance, the following words:- accumulated buyback deductions.

SECTION 3. This act shall take effect on July 1, 2005.

Names and Addresses of Public Employees

Section 8 of the FY05 Budget changed the public record status of the home addresses and telephone numbers of public employees. This information can now only be released to employee organizations established under G.L. c. 150E, nonprofit organizations for retired public employees established under G.L. c. 180, or a criminal justice agency as defined in G.L. c. 6, § 167. This exclusion extends to the family members of employees of the Commonwealth.

PERAC has taken the position that the home addresses and telephone numbers of retirees also fall within the exemption.

FY05 Budget: Public Records

SECTION 8. Clause Twenty-sixth of section 7 of chapter 4 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after subclause (n) the following 2 subclauses:—

(o) the home address and home telephone number of an employee of the judicial branch, an unelected employee of the general court, an agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of a political subdivision thereof or of an authority established by the general court to serve a public purpose, in the custody of a government agency which maintains records identifying persons as falling within those categories; provided that the information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for

FY05 Budget: Public Records (cont.)

retired public employees under chapter 180, or a criminal justice agency as defined in section 167 of chapter 6.

(p) the name, home address and home telephone number of a family member of a commonwealth employee, contained in a record in the custody of a government agency which maintains records identifying persons as falling within the categories listed in subclause (o).

Termination of Benefits for Failure to File the Annual Statement of Earnings (G.L. c. 32, § 91A)

Sections 85 and 86 of the FY05 Budget will result in the termination of a disability retiree's allowance if he or she fails to file the Annual Statement of Earnings. If the retiree files the required statement after the allowance has been terminated, the allowance will commence again, but no payment will be made for the period during which the allowance was terminated.

PERAC reviews all submissions carefully. If a retiree fails to file the required documents, notice to the member is provided and a hearing before the board is available prior to termination. The PERAC wage reporting data base contains flags to identify retirees who are incompetent or in nursing homes. As a result, the allowances of very few retirees will be acted upon.

The new provision in G.L. c. 32, § 91A will be implemented in the filing cycle that will begin on April 15, 2005.

FY05 Budget: § 91A Benefit Termination

SECTION 85. Section 91A of Chapter 32 of the General Laws is hereby amended by striking the words "cease and shall in no event be reinstated" as they appear in lines 14 and 15 of the 2002 Official Edition and inserting in place thereof the word "terminate".

SECTION 86. Said section 91A of said chapter 32 of the General Laws, as so appearing, is hereby further amended by adding the following new sentence:-

A member shall not be entitled to recover a retirement allowance for any period during which the member's rights in and to his retirement allowance were terminated for failure to submit a statement to the commission under this section. After written notice and opportunity to be heard by the board, termination of a member's rights in and to a retirement allowance for failure to submit a statement to the commission shall be considered by the board to be effective as of the date that such statement was due to be submitted to the board. If a retirement allowance was paid to a member for any period during which such member's rights in and to a retirement allowance were terminated for failure to submit a statement to the commission, such member shall refund the portion of his retirement allowance attributable to such period.

COLA Study

Section 375 of the FY05 Budget directs the PERAC Actuary to analyze, study, and evaluate the costs and actuarial liabilities attributable to increasing the base to which cost of living adjustments (COLAs) are applied. The study shall include the cost and actuarial liability associated in increasing the base from $12,000 to $22,000 in $1,000 increments. The Commission is to prepare supplemental pension funding schedules which shall be designed to reduce the ac-

COLA Study (cont.)

tuarial unfunded liability, attributable to the increased COLA base, to $0 on or before June 30, 2028. Two alternative schedules reducing the unfunded liabilities to $0 by June 30, 2034 and June 30, 2038 will also be prepared. A report will be filed by the Commission together with recommendations and proposed funding schedules to the House and Senate Committees on Ways and Means, along with the Joint Committee on Public Service on or before December 31, 2005. Assistance in developing funding schedules for the purpose of increasing the COLA base to city, town, county, regional, district and authority retirement systems will also be provided.

FY05 Budget: COLA Study

SECTION 375. The Public Employee Retirement Administration Commission in consultation with the state and state teacher's retirement boards shall analyze, study, and evaluate the costs and actuarial liabilities attributable to increasing the base to which cost of living adjustments are applied under section 102 of chapter 32 of the General Laws. The study shall include the cost and actuarial liability associated in increasing the base from 12,000 to 22,000 incrementally by the thousand. In order to effectuate the funding for the change in the base, the commission shall prepare supplemental pension funding schedules which shall be designed to reduce the actuarial unfunded liability, attributable to the increased COLA base, to 0 on or before June 30, 2028 and shall provide 2 alternative schedules providing the option of reducing the unfunded liabilities to O by June 30, 2034 and June 30, 2038, respectively; provided, that in preparing such schedules, the commission shall consider the actuarial value and the market value of the system's assets and liabilities, the long term investment rate of return on the systems assets and the system's unfunded actuarial liability. The commission shall file the study together with its recommendations and proposed funding schedule to the house and senate committees on ways and means, along with the joint committee on public service on or December 31, 2005. The commission shall provide assistance in developing funding schedules for the purpose of increasing the COLA base to city, town, county, regional, district and authority retirement systems at the request of the appropriate retirement board.

PERAC Regulations Amended

A few changes to PERAC regulations became effective in late August. New editions of the Regulations will be available soon. Major changes included:

The definition of "earnings from earned income" that the Supreme Judicial Court upheld in *Boston Retirement Board v. Contributory Retirement Appeal Board,* 441 Mass. 78 (2004), has been included in the regulations [840 CMR 10.14(4)].

Boards may choose to send out the required affidavits to retirees every two years rather than annually. [840 CMR 15.01(1)].

Members will be allowed to purchase less than all of their non-membership service. [840 CMR 15.02(2)].

The Internal Control Questionnaire (ICQ) that had been codified in the regulations has been deleted. In the future, the Commission will periodically update the ICQ and issue it to all boards.